



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.bpu.state.nj.us](http://www.bpu.state.nj.us)**

**TELECOMMUNICATIONS**

IN THE MATTER OF THE JOINT )  
PETITION OF VERIZON )  
COMMUNICATIONS INC. AND MCI, INC. )  
FOR APPROVAL OF MERGER )

**PROVISIONAL ORDER**

DOCKET NO. TM05030189

**(SERVICE LIST ATTACHED)**

BY COMMISSIONER FREDERICK F. BUTLER:

The New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:2-1 et seq., has been granted general supervision and regulation of and jurisdiction and control over all public utility systems which operate within the State of New Jersey. Moreover, the Board has specifically been granted the authority to review certain mergers and acquisitions by and of such public utilities, pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10.

On March 3, 2005 Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") (jointly "petitioners") filed a petition for the approval of a transaction which would result in MCI becoming a wholly-owned subsidiary of Verizon ("merger").

On June 6, 2005, Staff convened a prehearing conference in order to discuss several issues pertaining to this proceeding. The meeting was attended by counsel for Board Staff, petitioners, the Division of the Ratepayer Advocate ("RPA"), and several competitive local exchange carriers ("CLECs"), as well as the Advising Deputy Attorney General assigned to this matter. All parties at this informal meeting were afforded and took advantage of the opportunity to discuss possible procedural schedules and to express their concerns with regard to the sufficiency of timelines in light of expected discovery disputes. Considerable disagreement ensued over the appropriate time frames, and no consensus was

reached regarding a procedural schedule. After weighing all the informal comment, Board Staff recommended a schedule that allowed for longer discovery periods than those imposed in another pending telecommunications merger proceeding before the Board involving two large carriers, but not as long as those advocated by the RPA and the CLECs. The Board reviewed and accepted this recommendation in a Prehearing Order issued on June 8, 2005.

On June 20, 2005, the RPA filed a motion for reconsideration of the Board's Prehearing Order. The RPA alleged, *inter alia*, that the procedural schedule set out in that Order should be revised because it permits inadequate time for the completion of discovery. The RPA also alleged that the Board did not consider its concerns, expressed at the prehearing conference, regarding the appropriate length of the procedural schedule. The RPA was joined by the joint intervenor group of telecommunications carriers referred to as the Competitive Carrier Group ("CCG")<sup>1</sup>, as well as intervenor Qwest Communications ("Qwest").

Verizon filed a written response to the RPA's motion on June 23, 2005, contending that the RPA presented no basis for reconsideration of the Board's procedural schedule, as required by N.J.A.C. 14:1-8.6 and relevant case law. Verizon also contended that the schedule permitted adequate time for full and complete discovery. In a footnote, Verizon also expressed its view that the Board's procedural schedule permitted it until July 29, 2005 to answer the RPA's June 17 discovery requests.

Qwest took issue with Verizon's position regarding when, under the current schedule, discovery responses are due. Qwest cited N.J.A.C. 1:1-10.4(b) to require Verizon to respond to discovery requests within 15 days. Qwest also interpreted the July 29, 2005 date listed in the current schedule as the date by which all discovery must be completed, consistent with N.J.A.C. 1:1-10.4(e), rather than the date on which all responses are due irrespective of when the corresponding requests were served.

The Board denied the RPA's motion, finding no basis for reconsidering its previous scheduling decisions. The Board also noted that Verizon had misinterpreted the schedule and was required to answer timely discovery requests according to the timeframes set out in N.J.A.C. 1:1-10.4(c). The Board also stated, consistent with Qwest's position, that the "schedule clearly contemplates that all discovery activity must be completed by July 29, 2005."

On July 20, 2005, the RPA sent a letter to Anthony Centrella, Director of the BPU's Division of Telecommunications. In that letter the RPA expressed its view that, pursuant to the Board's case schedule and relevant administrative rules, parties could serve discovery requests until August 26, 2005. Verizon responded on July 22, 2005 with a letter to Mr. Centrella. In that letter Verizon expressed its

---

<sup>1</sup> Broadview Networks, Inc.; DIECA Communications, Inc. d/b/a Covad Communications Company; CTC Communications Corp. and XO Communications Services, Inc.

countervailing view that, pursuant to the Board's original scheduling order and its Order denying the RPA's motion for reconsideration, July 20, 2005 was the cutoff date for discovery requests, and that all discovery activity, including service of requests, was required to be completed by July 29, 2005. Verizon requested that Staff confirm Verizon's understanding of the procedural schedule.

On August 12, 2005, the RPA sent a letter to this Presiding Officer, styled as a Motion for Clarification, stating its position that the aforementioned July 20 discovery cutoff date pertains only to first round (pre-reply testimony) discovery. The RPA further requested clarification that it could serve additional discovery requests based on reply testimony filed on August 19, 2005. The RPA contended that its interpretation of the Board's schedule was consistent with N.J.A.C. 1:1-10.4(e).

By letter dated August 22, 2005, Verizon responded to the RPA's motion. Verizon stated its position that the Board's schedule and subsequent clarification clearly required all discovery requests to be served by July 20, and all discovery activity to be concluded on or before July 29, 2005. Verizon also contested the RPA's interpretation of N.J.A.C. 1:1-10.4(e).

No other party filed papers supporting or opposing the RPA's motion.

## DISCUSSION

Absent a legislative restriction, administrative agencies have the inherent power to reopen or to modify and rehear prior decisions. In re Trantino Parole Application, 89 N.J. 347, 364 (1982); Skulski v. Nolan, 68 N.J. 180, 195 (1975); Ruvoldt v. Nolan, 63 N.J. 171, 183 (1973); Handlon v. Town of Belleville, 4 N.J. 99, 106-107 (1950). N.J.S.A. 48:2-40 expressly provides that the Board at any time may order a rehearing and/or extend, revoke or modify and order made by it. Tp. of Deptford v. Woodbury Terrace Sewerage Corp. 54 N.J. 418, 425 (1969); N.J. Bell Tel. Co. v. Bd. of Pub. Util. Comm'rs., 12 N.J. 568, 579 (1953); Central R. Co. of N.J. Dept. of Public Utilities, 7 N.J. Super. 254-255 (1951).

N.J.A.C. 1:1-10.4(e) provides, in pertinent part:

The parties shall complete all discovery no later than 10 days before the first scheduled hearing or by such date ordered by the judge at the prehearing conference.

As a threshold matter, it is unclear why the RPA and Verizon both initially sought written clarification of the meaning of a Board Order from Staff, rather than the Board itself or this Presiding Officer. As a party to the case, Staff is bound by Board Orders like any other party, and is not situated to provide binding interpretations thereof.

With respect to the merits of the RPA's motion, I find that no further clarification of the Board's schedule is necessary. All parties to this proceeding participated in the prehearing conference in which a full panoply of scheduling issues were discussed. Prior to issuing its schedule, the Board considered at length and weighed the arguments and positions regarding the amount of time necessary for a full and complete exchange of discovery. The RPA had ample opportunity to express its views at the prehearing conference, and did so. The RPA expressed these views again in its Motion for Reconsideration, which was denied by the Board.

With regard to service of discovery requests, the Board's July 6, 2005 Order on Reconsideration was clear: "July 20 represents the *last* date on which such requests can be served." Moreover, the Order was equally clear regarding the final discovery completion date: "[t]he Board's schedule clearly contemplates that all discovery activity must be completed by July 29, 2005." Moreover, nothing in the Board's July 6 Order on Reconsideration is inconsistent with N.J.A.C. 1:1-10.4(e), which expressly allows for the exercise of Board discretion in the setting of discovery deadlines. N.J.A.C. 1:1-10.4(e). I therefore disagree with the RPA that the schedule permits service of discovery requests after August 19, 2005.

Based on the foregoing, the RPA's Motion for Clarification is hereby **DENIED**.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: 8/30/05

BY:   
FREDERICK F. BUTLER  
COMMISSIONER

## SERVICE LIST

### **I/M/O THE JOINT PETITION OF VERIZON COMMUNICATIONS INC. AND MCI, INC. FOR APPROVAL OF MERGER**

**DOCKET NO. TM05030189**

Jane Kunka, Policy Advisor  
To Commissioner Connie O. Hughes  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
[jane.kunka@bpu.state.nj.us](mailto:jane.kunka@bpu.state.nj.us)

William Agee, Special Counsel to the President  
and Assistant Secretary of the Board  
Office of the Secretary  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
[william.agee@bpu.state.nj.us](mailto:william.agee@bpu.state.nj.us)

Michael Gallagher, Acting Executive Director  
New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
[michael.gallagher@bpu.state.nj.us](mailto:michael.gallagher@bpu.state.nj.us)

John Garvey, Economist  
New Jersey Board of Public Utilities  
Office of the Economist  
Two Gateway Center  
Newark, NJ 07102  
[john.garvey@bpu.state.nj.us](mailto:john.garvey@bpu.state.nj.us)

Anthony Centrella, Director  
New Jersey Board of Public Utilities  
Division of Telecommunications  
Two Gateway Center  
Newark, NJ 07102  
[anthony.centrella@bpu.state.nj.us](mailto:anthony.centrella@bpu.state.nj.us)

James Murphy, Competitive Services and Mergers  
New Jersey Board of Public Utilities  
Division of Telecommunications  
Two Gateway Center  
Newark, NJ 07102  
[james.murphy@bpu.state.nj.us](mailto:james.murphy@bpu.state.nj.us)

Seema M. Singh, Ratepayer Advocate and Director  
Division of the Ratepayer Advocate  
31 Clinton Street  
PO Box 46005  
Newark, NJ 07101  
[ssingh@rpa.state.nj.us](mailto:ssingh@rpa.state.nj.us)

Christopher White, Deputy Ratepayer Advocate  
Division of the Ratepayer Advocate  
31 Clinton Street  
PO Box 46005  
Newark, NJ 07101  
[cwhite@rpa.state.nj.us](mailto:cwhite@rpa.state.nj.us)

Paul Flanagan, Deputy Ratepayer Advocate  
Division of the Ratepayer Advocate  
31 Clinton Street  
PO Box 46005  
Newark, NJ 07101  
[pflanagan@rpa.state.nj.us](mailto:pflanagan@rpa.state.nj.us)

Maria Novas Ruiz, Esq.  
Division of the Ratepayer Advocate  
31 Clinton Street  
PO Box 46005  
Newark, NJ 07101  
[mnovas-ruiz@rpa.state.nj.us](mailto:mnovas-ruiz@rpa.state.nj.us)

Susan Baldwin, Asst Deputy Ratepayer Advocate  
17 Arlington Street  
Newburyport, MA 01950  
[smbaldwin@comcast.net](mailto:smbaldwin@comcast.net)

Elise Goldblat, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> fl.  
Newark, NJ 07101  
[elise.goldblat@law.dol.lps.state.nj.us](mailto:elise.goldblat@law.dol.lps.state.nj.us)

Jeff Slutzky, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> fl.  
Newark, NJ 07101  
[jeff.slutzky@law.dol.lps.state.nj.us](mailto:jeff.slutzky@law.dol.lps.state.nj.us)

Todd Steadman, DAG  
Division of Law  
124 Halsey Street, 5<sup>th</sup> fl.  
Newark, NJ 07101  
[Todd.steadman@law.dol.lps.state.nj.us](mailto:Todd.steadman@law.dol.lps.state.nj.us)

Richard A. Chapkis, Vice President & General Counsel  
Dawn Czapala  
Verizon New Jersey Inc.  
540 Broad Street, Floor 20  
Newark, NJ 07102  
[Richard.chapkis@verizon.com](mailto:Richard.chapkis@verizon.com)

Sherry F. Bellamy, Vice President & Associate General Counsel  
Verizon Corporate Services Corp.  
1515 North Courthouse Road, Suite 500  
Arlington, VA 22201  
[Sherry.f.bellamy@verizon.com](mailto:Sherry.f.bellamy@verizon.com)

Robert P. Slevin, Associate General Counsel  
Verizon Corporate Services Corp.  
1095 Avenue of the Americas, Room 3824  
New York, NY 10036  
[Robert.p.slevin@verizon.com](mailto:Robert.p.slevin@verizon.com)

Marsha A. Ward, National Director-State Regulatory Law & Public Policy  
MCI, Inc.  
6 Concourse Parkway, Suite 600  
Atlanta, GA 30328  
[Marsha.ward@mci.com](mailto:Marsha.ward@mci.com)

James H. Laskey, Esq.  
Norris, McLaughlin & Marcus, P.A.  
721 Route 202-206  
P.O. Box 1018  
Somerville, NJ 08876-1018  
[Jhlaskey@nmmlaw.com](mailto:Jhlaskey@nmmlaw.com)

Michael McRae, Esq.  
MCI  
22001 Loudoun County Parkway  
Ashburn, VA 20147  
[michael.mcrae@mci.com](mailto:michael.mcrae@mci.com)

Thomas W. Snyder, Esq.  
Qwest Services Corporation  
1801 California, Suite 1000  
Denver, CO 80202  
[Tom.snyder@qwest.com](mailto:Tom.snyder@qwest.com)

Barbara Brohl, Esq.  
Qwest Services Corporation  
1801 California, Suite 1000  
Denver, CO 80202  
[Barbara.brohl@qwest.com](mailto:Barbara.brohl@qwest.com)

Yaron Dori, Esq.  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
[ydori@hhlaw.com](mailto:ydori@hhlaw.com)

Olivia M. Farrar, Esq.  
Hogan & Hartson L.L.P.  
555 13<sup>th</sup> Street, N.W.  
Washington, D.C. 20004  
[omfarrar@hhlaw.com](mailto:omfarrar@hhlaw.com)

Martin C. Rothfelder, Esq.  
Rothfelder Stern, L.L.C.  
625 Central Avenue  
Westfield, NJ 07090  
[mrothfelder@rothfelderstern.com](mailto:mrothfelder@rothfelderstern.com)

Bradford M. Stern, Esq.  
Rothfelder Stern, L.L.C.  
625 Central Avenue  
Westfield, NJ 07090  
[bmstern@rothfelderstern.com](mailto:bmstern@rothfelderstern.com)

Mark L. Mucci, Esq.  
Saul Ewing LLP  
One Riverfront Plaza  
Newark, NJ 07102  
[mmucci@saul.com](mailto:mmucci@saul.com)

Alan M. Shoer, Esq.  
Director of Regulatory Affairs & Counsel  
Conversent Communications of New Jersey, LLC  
24 Albion Road, Suite 230  
Lincoln, RI 02865  
[ashoer@conversent.com](mailto:ashoer@conversent.com)

Karly E. Baraga, Esq.  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> street, N.W., Suite 500  
Washington, D.C. 20036  
[kbaraga@kelleydrye.com](mailto:kbaraga@kelleydrye.com)

Harry M. Davidow, Esq.  
Kelley Drye & Warren, LLP  
101 Park Avenue  
New York, NY 10178  
[h davidow@kelleydrye.com](mailto:h davidow@kelleydrye.com)

Andrea P. Edmonds, Esq.  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> street, N.W., Suite 500  
Washington, D.C. 20036  
[aedmonds@kelleydrye.com](mailto:aedmonds@kelleydrye.com)

Joseph Boyle, Esq.  
Kelley Drye & Warren, LLP  
200 Kimball Drive  
Parsippany, NJ 07054  
[jboyle@kelleydrye.com](mailto:jboyle@kelleydrye.com)